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No. 508

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNITED STATES OF AMERICA, PETITIONER

v.

INTERNATIONAL BUILDING COMPANY,
A CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Eighth Circuit entered in the above-entitled case on September 19, 1952.

OPINIONS BELOW

The memorandum opinion of the District Court (R. 178-185) is reported at 97 F. Supp. 595. The opinion of the Court of Appeals (R. 206-224) is reported at 199 F. 2d 12.

JURISDICTION

The judgment of the Court of Appeals was entered on September 19, 1952 (R. 225). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED

The Commissioner assessed deficiencies against the taxpayer for the taxable years 1933, 1938, and 1939, determining that the taxpayer had claimed an excessive value as its basis for depreciating certain property and was amortizing this basis over too short a period. The taxpayer filed petitions for redetermination by the Tax Court of these deficiencies. Without further proceedings, the Commissioner and the taxpayer filed stipulations in the Tax Court that there were no deficiencies for the years in question. No facts were stipulated, no hearings were held, and no issues were presented for decision by the Tax Court, which, pursuant to the stipulations, entered decisions that there were no deficiencies. The question presented is whether these decisions, on the principle of *res judicata* or estoppel by judgment, preclude the Government from showing in a subsequent suit by the taxpayer for recovery of deficiency taxes for later taxable years that the proper basis for depreciation of taxpayer's property is lower than the basis claimed in 1933, 1938, and 1939.

STATEMENT

This action was brought by respondent corporation (the taxpayer) to recover deficiency taxes paid for the years 1943, 1944, and 1945 (R. 31). The only disputed item material to this petition is the disallowance by the Commissioner of

claimed deductions for depreciation. The facts, as stipulated by the parties (R. 31-93) and found by the district court (R. 186-187), may be summarized as follows:

The taxpayer corporation was organized under the laws of the State of Missouri on April 14, 1913 (R. 34). In exchange for all of its authorized capital stock and bonds issued on May 1, 1913, taxpayer acquired a leasehold expiring December 31, 2004, of a plot of ground, together with a building which had been erected thereon by the lessee (R. 34, 36).

From its acquisition of the leasehold on May 1, 1913, to December 31, 1919, taxpayer claimed no depreciation in its tax returns. From 1920 through 1942 taxpayer claimed total depreciation deductions of \$412,848.92, the amounts claimed for the years 1920 through 1939 being computed on a depreciable basis of \$860,000, and subsequent to 1939 on a basis of \$870,383 (R. 38-39, 42).

For the years 1933, 1938, and 1939, the Commissioner assessed deficiencies in taxpayer's income taxes. In his deficiency determinations for these years, the Commissioner valued the leasehold for depreciation and amortization purposes at \$385,000, as of May 1, 1913, and determined that this amount, less depreciation already taken, was to be amortized over the remaining life of the lease (R. 44-45). The taxpayer, in two petitions for review by the Board of Tax Appeals (now the

Tax Court) of these deficiency assessments, alleged, as does the complaint in the present suit (R. 7-15), that the value of the building on May 1, 1913, was \$860,000 and that this value should be depreciated over the remaining life of the building, 45 years from May 1/1913 (R. 45):

Before any further action had been taken in the Tax Court proceedings, taxpayer on November 12, 1941, filed a petition under Chapter X of the Federal Bankruptcy Act in the United States District Court for the Eastern District of Missouri. In this proceeding, the Collector of Internal Revenue filed proof of claim for the deficiencies in taxes for 1933, 1938, and 1939, along with a claim for additional taxes for 1941 (R. 45). On October 7, 1944, a stipulation was filed in the bankruptcy proceeding by which the Government withdrew its claim for additional taxes and interest for 1933, 1938, 1939, and 1941 (R. 46, 51).^{*} This stipulation provided (R. 51):

It is * * * Stipulated and Agreed by and between the parties hereto that the withdrawal of said Amended Claim by the United States is without prejudice and does not constitute a determination of the merits and does not prejudice the rights or remedies of the United States for the collection of Internal Revenue taxes that may be due with respect to any year other than those involved in said Amended Claim, namely, the years of 1933, 1938, 1939 and 1941.

On October 11, 1944, the taxpayer and the Commissioner filed stipulations in the pending review proceedings in the Tax Court that there were no deficiencies for the years 1933, 1938, and 1939 (R. 46, 51-52, 54). The Tax Court held no hearing; there was no argument; no stipulation of facts was entered into; and no briefs were filed (R. 46). On October 17, 1944, pursuant to the stipulations, the Tax Court entered decisions that there were no deficiencies in income taxes for 1933, 1938, and 1939 (R. 46, 52, 54). It is these decisions which give rise to the problem of collateral estoppel in the present action involving the years 1943, 1944, and 1945.

In the present action, seeking recovery of deficiency taxes paid for the years 1943, 1944, and 1945, the taxpayer claimed that \$860,000 was the correct valuation of its building on May 1, 1913, and that this amount was properly to be amortized over the 45-year life of the building. The Commissioner, determining that the taxpayer's basis for depreciation (the fair market value of the building on May 1, 1913) was \$430,000, and finding that allowed and allowable deductions for years prior to 1943 had exceeded this basis, had disallowed claimed deductions and assessed the deficiencies in question (R. 42).

The district court, agreeing with the Commissioner, found as a fact that the value of the leasehold as of May 1, 1913, did not exceed \$430,000

(R. 187). On the taxpayer's appeal, the court below approved this finding (R. 211).

The district court also rejected taxpayer's contention (R. 7-8, 15-16, 46) that the Tax Court's decisions pursuant to stipulation of "no deficiency" for the years 1933, 1938, and 1939 estopped the Commissioner from asserting that the basis for depreciation was less than \$860,000. Pointing out that the Tax Court's decisions had been entered without hearings, that no facts had been presented to that court, by stipulation or otherwise—that there had been, in short, "no issues presented for the Court to decide"—the district court concluded that neither of those decisions had been anything "more than an order confirming an agreement of counsel" (R. 179-180). On this issue, the court below reversed. It held that in stipulating for the prior Tax Court decisions, the parties had "threshed out the facts" and "agreed upon the basis for depreciation" (R. 223). Recognizing that its holding conflicted with *Trapp v. United States*, 177 F. 2d 1 (C. A. 10), certiorari denied, 339 U. S. 913, the court concluded that the stipulated decisions of the Tax Court established for all subsequent years the taxpayer's basis for depreciation of its leasehold and precluded litigation of that issue in the present suit (R. 218, 223-4).

REASONS FOR GRANTING THE WRIT

As the court below acknowledges (R. 218, 223), its decision is in square conflict with the decision of the Court of Appeals for the Tenth Circuit in *Trapp v. United States*, 177 F. 2d 1, certiorari denied, 339 U. S. 913. While the court below views it as being distinguishable (R. 220), we believe *Hartford-Empire Co. v. Commissioner*, 137 F. 2d 540 (C. A. 2), is also in conflict with the decision here. Disagreeing with the view of the Tax Court itself—that its form decision¹ pursuant to stipulation affecting one taxable year, where no legal or factual issues are presented or determined, merely serves to carry out “an agreement of the parties to settle their * * * controversy for undisclosed reasons satisfactory to themselves,” and will not sustain a plea of estoppel by judgment as to issues presented for other taxable years, *Riter v. Commissioner*, 3 T. C. 301, 305—the decision below departs from principles stated by this Court in *Commissioner v. Sunnen*, 333 U. S. 591, 597-598, 599-600, and *Tait v. Western Md. Ry. Co.*, 289 U. S. 620, 623, 626. The decision below, rejecting the position of the Bureau of Internal Revenue, approved by the Tax Court, that the many cases settled by stipulated decisions of this kind, affect

¹ For stipulated decisions of the type involved here, the Tax Court employs a standard form which requires only that the case number, the names of the parties, and the stipulated deficiency, if any, be entered.

only the taxable years directly involved, presents an important question in the administration of the tax laws which should be resolved by this Court.

1. Contrary to the decision below, the Court of Appeals for the Tenth Circuit held in *Trapp v. United States*, 177 F. 2d 1, certiorari denied, 339 U. S. 913, that the doctrine of estoppel by judgment could have no application where the prior Tax Court decision for prior taxable years alleged to effect the estoppel was entered pursuant to stipulation—with no stipulation of facts, no hearing, and no issues of any kind presented for actual litigation.² That holding, like the holding in *Hartford-Empire Co. v. Commissioner*, 137 F. 2d 540 (C. A. 2), which we think is also in conflict

² The court below suggests (R. 223) that the *Trapp* decision is inconsistent with the Tenth Circuit's earlier decision in *Continental Petroleum Co. v. United States*, 87 F. 2d 91, certiorari denied, 300 U. S. 679. The latter case, however, decided only that a decision of the Tax Court of which no review was sought was *res judicata* in the strict sense of that term—i. e., that it prevented relitigation by the taxpayer in a new action of the same claim for the same taxable year. The wholly different problem here is one of determining whether a Tax Court decision pursuant to stipulation concludes issues not actually litigated when such issues are posed in suits on other causes of action for other taxable years. Overlooking this distinction, the court below invokes in support of its conclusion other cases which involved attempts to relitigate (1) the same cause of action between the same parties, (2) matters actually litigated in the prior suit, or (3) issues involved in consent judgments based upon specific stipulations expressly resolving such issues.

with the decision below, accords with this Court's declaration in *Commissioner v. Sunnen*, 337 U. S. 591, that where, as here, a different cause of action is involved, the taxable years being different (333 U. S. at 598)—

the judgment in the prior action operates as an estoppel, *not as to matters which might have been litigated and determined*, but "only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered." *Cromwell v. County of Sac*, *supra* [94 U. S. 351], 353. [Emphasis added.]⁴

³ The opinion below briefly dismisses as distinguishable the *Hartford-Empire* decision after quoting from it the following language of Judge Learned Hand (R. 220):

"How far a decision upon a question of law can be an estoppel in a later action upon a different cause of action is a vexed question, but no one has ever suggested that it can extend to matters not actually litigated." [137 F. 2d at 542.]

It may be that the Court below considered *Hartford-Empire* inapposite because of the reference to "a question of law," taking the view that the present action involves instead a "question of fact." But our point is that, in the instant case, all conceivable issues which might have been posed in the earlier proceedings were "matters not actually litigated." In *Hartford-Empire*, as here, the issue implicitly abandoned by the stipulation in the prior proceedings was an issue as to the basis for depreciation of certain property of the taxpayer. Whether legal or factual, the important thing about that issue when it arose in the later action was that it had never been actually litigated so that it could not be deemed to have been determined for subsequent taxable years.

⁴ Cf. *Fruehauf Trailer Co. v. Gilmore*, 167 F. 2d 324 (C. A. 10); *Blaffer v. Commissioner*, 134 F. 2d 389 (C. A. 5).

This principle has been uniformly followed by the Tax Court in decisions preceding, as well as following, the filing in that court of the stipulations here in question: *Volunteer State Life Insurance Co. v. Commissioner*, 35 B. T. A. 491, 494-495, reversed on other grounds, 110 F. 2d 879 (C. A. 6), certiorari denied, 310 U. S. 636; *Riter v. Commissioner*, 3 T. C. 301, 305; *Pitcairn v. Commissioner*, decided May 22, 1944 (1944 P-H T. C. Memorandum Decisions, par. 44,185); *Laughlin v. Commissioner*, decided October 3, 1944 (1944 P-H T. C. Memorandum Decisions, par. 44,317). See also *Restatement, Judgments*, Section 68 and Comments *g*, *h*, and *i*.

In the prior proceedings which the court below has treated as *res judicata* here, there was no judgment on the merits, for no issues were presented for the Tax Court to decide. No hearings were held and no evidence was received. No facts were stipulated. The stipulations of "no deficiency" set forth no facts on which that conclusion was based (R. 46, 51-52, 53). The orders of the Tax Court simply recited that, pursuant to the stipulations, it was ordered and decided that there were no deficiencies for the years in question.

Far from supporting the conclusion of the court of appeals that the parties had "threshed out the facts" and "agreed upon the basis for depreciation" (R. 223), the record shows the contrary. Four days before the stipulations for the

Tax Court's decisions were executed, the Collector and the taxpayer had withdrawn by stipulation the Government's claim in the bankruptcy court for the taxes in question. This stipulation recites that it is (R. 51)—

without prejudice and does not constitute a determination of the merits and does not prejudice the rights or remedies of the United States for the collection of Internal Revenue taxes that may be due with respect to any year other than those involved * * *

Though these restrictions were not reiterated in the more laconic forms of stipulation filed with the Tax Court, the bare agreement to accept a finding of "no deficiency" affords no warrant for concluding that the parties had reached agreement on the merits of any disputed issues. What is crucial, in any event, is that no issues of any kind were presented to, or considered and resolved by, the Tax Court.

We submit, in short, that the decisions pursuant to stipulation of the Tax Court were, as that court has described such decisions, merely *pro forma* acceptances of "an agreement of the parties to settle their * * * controversy for undisclosed reasons satisfactory to themselves * * *." *Riter v. Commissioner*, 3 T. C. 301, 305. They served merely as orderly, expeditious ways of set-

ting the particular suits for the particular taxable years involved.⁵

2. The question in this case is important. Well over half the cases brought to the Tax Court are settled by stipulation.⁶ Both the Bureau of In-

⁵ Section 1117 (d) of the Internal Revenue Code, 26 U. S. C. 1117 (d), provides that "If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Commissioner." In light of this provision, acceptance by the taxpayer of a mere dismissal of its petition would not carry out the intention of the parties where they have agreed to settle the dispute on the basis of no deficiency or a deficiency different from the one originally assessed by the Commissioner. Apart from this technical problem, which makes a form "decision" of the Tax Court an appropriate means of effectuating the settlement, it seems clear that the decision in such a case is no more an adjudication of any issue than would be a voluntary dismissal of the action.

⁶ In the years from 1925 through November 30, 1952, out of 151,390 cases closed, 94,293 were settled by stipulation. For the fiscal year ending June 30, 1952, the figures were 3326 stipulated in a total of 4975; for the year ending June 30, 1951, 3364 out of a total of 5055; and for the year ending June 30, 1950, 2732 out of 4125.

Among the numerous reasons, apart from the merits of the particular case, which commonly lead to stipulated decision, the following may be noted: (1) Discovery of adjustments on issues other than those originally in dispute between the taxpayer and the Commissioner which result in elimination of the asserted deficiency; (2) discovery of procedural defects or irregularities in the Commissioner's deficiency determination for the particular year or years involved; (3) the relatively small amount involved in a particular case weighed against possible expenses and difficulties of proof and the budgetary and personnel limitations under which the Bureau operates.

ternal Revenue and the Tax Court have consistently assumed that such decisions—at least where no underlying factual or legal contentions are presented to the court for resolution—affect only the particular taxable years they involve and preclude neither party from litigating in the future issues which might have been, but were not, actually litigated in the cases settled by stipulation.

Under the decision below, the thousands of cases so settled become conclusive “adjudications” of issues which they were never intended to resolve and which they did not in fact resolve. If permitted to stand, the decision will foster needless litigation in cases where administrative settlements through stipulated decisions, for reasons which frequently have nothing to do with the merits of any particular issue, would otherwise dispose of the controversies.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

WALTER J. CUMMINGS, JR.

Solicitor General.

DECEMBER 1952.